

HUMAN SERVICES BOARD

INTRODUCTION

DISCUSSION

The petitioner holds an "E2 Visa". This prevents him from obtaining a "green card" for employment in the U.S., although, apparently, it does not prohibit him from owning and maintaining his own business here.

The petitioner applied for VHAP in December 2007. The Department initially denied the application based on a determination that the petitioner was not a resident of Vermont. However, following the petitioner's appeal, the Department amended its decision by determining that the petitioner did not meet the requirements in the regulations regarding U.S. citizenship.

The VHAP regulations (as amended effective January 1, 2007) include the provision in § 4001.3 that conditions eligibility for VHAP on the same citizenship requirements contained in the federal and state Medicaid regulations. W.A.M. § M170.1(a) of the Medicaid regulations (specifically referenced in § 4001.3) provides:

As a condition of eligibility for Medicaid an individual must be:

- (1) A citizen or national of the United States (M170.2), or
- (2) A qualified alien (M170.3).

It does not appear that the petitioner in this matter maintains that he meets either definition. Holders of visas are not included in the definition of "qualified aliens" under § M170.3. In his arguments at the hearing (held on February 19, 2008) and in a subsequent written argument (received by the Board on March 6, 2008) the petitioner

essentially argued that he should be found eligible for VHAP because he is a "resident of Vermont". Even if he is correct in this assessment, however, the above regulations make clear that this is insufficient to meet the *U.S.* citizenship requirements as set forth above¹.

The petitioner alleges that in February 2007 he was denied free emergency services by a Vermont hospital based on his citizenship status.² At this point, it is difficult to see how the Board would have jurisdiction, based on either subject matter or timeliness, to consider any action against the hospital that denied the service. See 3 V.S.A. § 3091(a), Fair Hearing Rule No. 1. The Department has an internal investigation and complaint procedure for violations

¹ The petitioner is advised to contact the representative and senators to the Vermont Legislature from his district to seek a possible legislative remedy for this provision in the regulations.

² The Medicaid regulations do contain a provision that "non-qualified aliens are eligible for the treatment of emergency medical conditions if all of the following conditions are met". Section M170.8(a)(1) defines those conditions as follows:

Non-qualified aliens are eligible for the treatment of emergency medical conditions if all of the following conditions are met:

- (1) The individual has, after sudden onset, a medical condition—including emergency labor and delivery—manifesting itself by acute symptoms of sufficient severity—including severe pain—such that the absence of immediate medical attention could reasonably be expected to result in serious:
 - (i) jeopardy to the patient's health;
 - (ii) impairment of bodily functions; or
 - (iii) dysfunction of any bodily organ or part.

of provider responsibility under Medicaid (see W.A.M. § M155), which the petitioner is free to pursue. Concerning the denial of his eligibility for VHAP, however, inasmuch as the Department's decision is in accord with the pertinent regulations, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

ORDER

The Department's decision is affirmed.

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